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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,358	10/22/2003	Zhiping Shan	1094-36	4952
28249	7590	12/29/2005	EXAMINER	
DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. UNIONDALE, NY 11553			JOHNSON, CHRISTINA ANN	
			ART UNIT	PAPER NUMBER
			1725	
DATE MAILED: 12/29/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,358

Applicant(s)

SHAN ET AL.

Examiner

Christina Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-15 and 26-38 is/are allowed.
- 6) ☒ Claim(s) 1-12 and 16-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-38, in the reply filed on October 17, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-12 and 16-25 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 01/17901.

WO 01/17901 discloses an inorganic oxide that includes both mesopores and micropores, which is prepared by heating a mixture of (1) an inorganic oxide in water and (2) an organic material, and optionally a templating material and a preformed crystalline zeolite (page 4). Suitable organic materials include glycol or members of the group consisting of triethanolamine, sulfolane, tetraethylene pentamine, and diethylglycol dibenzoate (pages 4-5). The inorganic oxide material may further contain additional metals such as titanium, vanadium, zirconium, gallium, manganese, zinc,

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iron, and aluminum (page 9). Refer also to page 13. The material generally has a surface area of between 400 and 1200 m²/g (page 9).

The reference discloses specifically the preparation of a mesoporous material with zeolite beta crystals (page 18-19, Example 8). In the example, calcined zeolite beta is suspended in water with TEOS, triethanolamine, and TEAOH which are mixed to form a gel. The gel is dried at 100 degrees C and calcined at 600 degrees C. The beta-TUD-1 product has the claimed XRD pattern. Refer to Figure 7b. With reference to claim 12, "calcined zeolite beta" is considered to meet the required pre-treated zeolite.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by WO 01/17901.

Terminal Disclaimer

4. The terminal disclaimer filed on October 17, 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patents 6,762,143 and 6,814,950 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Allowable Subject Matter

5. Claims 13-15 and 26-38 are allowed.

Response to Arguments

6. Applicant's arguments filed October 17, 2005 have been fully considered but they are not persuasive.

Applicant argues that the WO reference is not prior art against the instant claims. This argument has been considered but is not persuasive. The instant application is a CIP of 09/995,227, filed 11/27/2001, which is a CIP of 09/390,276, filed 9/7/1999. The '276 application does not contain any disclosure of at least one type of ordered crystalline and microporous material with an average pore diameter less than 15 angstroms or a zeolite, in combination with a mesoporous material. Therefore, the instant claims have an effective filing date at best of 11/27/2001. The WO reference is a publication by another having a publication date (i.e. 3/15/2001) prior to the effective date of the instant claims. Therefore, the WO reference is a valid 102(a) reference against the instant claims. The fact that the WO reference and the instant application stem from a common priority document is not relevant.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

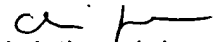
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Johnson whose telephone number is (571) 272-1176. The examiner can normally be reached on Monday-Friday, 7:30-5, with Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Christina Johnson
Primary Examiner
Art Unit 1725

12/21/05

CAJ
December 21, 2005